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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,042	07/18/2002	Jorg Peter Schur	von Kreisler.022	9726
110	7590	10/15/2004	EXAMINER	
DANN, DORFMAN, HERRELL & SKILLMAN 1601 MARKET STREET SUITE 2400 PHILADELPHIA, PA 19103-2307			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/070,042

Applicant(s)

SCHUR, JORG PETER

Examiner

Neil Levy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10,12,13,19-21,24,30,36,43 and 46-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3,4,7,24 and 36 is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,8-10,12,13,19-21,30,43, & 46-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejections under 35 USC 112 are withdrawn, in reconsideration of applicant's methods as impregnation and treatment of wood. The concern with efficacy remains, for reasons of record, but claims are not drawn to efficacious mold prevention or irradiation, so we accede to request for withdrawal. The issue of is tannin a tannic acid remains. Applicant's support in Merck indicates they are one and the same, as does the CAS database. The reference, Rodriquez, discloses sources, vegetable tannins and tannic acid. Applicant's pages 5, 6, 7 say nothing about tannins or tannic acid. Applicant provides no distinction. No structures are submitted. The 2 terms seen to be general and interchangeable. However, they are not GRAS.

Claims 1, 2, 5, 6, 8-10, 12, 13, ~~14~~ 21, 30, 43, 46, 47 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Blum et al 6207290.

The rejection of record is maintained. The particular I progenitor, inclusive of alcohol or propylene glycol, with any particular antioxidant inclusive of tannic acid, and with the conventional additives recited by Blum does not adversely effect the nature of the antifouling wood treatment composition, or method of treatment impregnation (col. 3, bottom) or spraying, (col. 5, line 25). Tannin is present, as the earlier of tannic acid (col. 4, line 61-63) and combinations are disclosed. Tannin, esters of tannic acid, and/or tannic acid are at least 0.01%, and up to 10%, while solvents (examples) are at

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least 30%, thus obvious for one in the art to achieve the instant claim 8% or that of claim 19, 30, 43.

Claims 3, 4, 7, 24, 36 are allowed.

Applicant's arguments filed on 7/29/04 have been fully considered but they are not persuasive. Applicants' arguments not persuasive are that consisting essentially excludes Blum, with other components. Examiner finds Blum and the instant methods are to the same problems and provide the same composting those for treating wood. Withdrawn rejection is in reconsideration of applicant's amendments and arguments.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gray Kunz can be reached on (571) 272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/LR
October 12, 2004



NEIL S. LEVY
PRIMARY EXAMINER